

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODNEY JAMES MILLS,
Plaintiff,
v.
J. AGURKIS, *et al.*,
Defendants.

Case No. 2:22-cv-01675-JDP (PC)
ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

ECF No. 10

SCREENING ORDER THAT PLAINTIFF:

(1) STAND BY HIS COMPLAINT
SUBJECT TO A
RECOMMENDATION OF
DISMISSAL;

(2) FILE AN AMENDED
COMPLAINT

ECF No. 1

THIRTY-DAY DEADLINE

Plaintiff, a pre-trial detainee at the Butte County Jail, alleges that medical personnel at the jail have refused to provide him with Suboxone, a prescription opioid that had been prescribed to him prior to intake at the jail. He has named four defendants: (1) J. Agurkis, a correctional lieutenant; (2) Hovey, the jail commander; (3) Tarah Foster, the jail medical director; and (4) the

Butte County Jail itself. ECF No. 1 at 2-3. The complaint fails to allege a cognizable claim against any defendant. I will give plaintiff an opportunity to amend before recommending this action be dismissed. Additionally, I will grant plaintiff's application to proceed *in forma pauperis*. ECF No. 10.

Screening Order

I. Screening and Pleading Requirements

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant's complaint liberally. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

II. Analysis

Plaintiff alleges that on July 28, 2022, he was seen by unidentified medical staff at Butte County Jail. ECF No. 1 at 12. He requested Suboxone and informed staff that his private physician had previously prescribed this medication. *Id.* Staff told him that the medication could not be prescribed because they had not been informed of the prescription during intake. *Id.* The remainder of the complaint is devoted to plaintiff's attempts to get his prescription and to have his medical care placed in the control of his private physician. *Id.* at 12-15. These allegations do not explain how each of the defendants personally violated plaintiff's rights.

The supervisory defendants—Hovey and Foster—are not mentioned in the body of the complaint. And there is no *respondeat superior* liability under section 1983, to the extent plaintiff seeks to hold them liable under such a theory. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) ("In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983.").

Defendant Agurkis is alleged to have responded to plaintiff's administrative grievances regarding his want of Suboxone. Merely responding to a grievance, however, does not give rise to a constitutional violation. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). And Agurkis is not alleged to have had any other responsibility or involvement in plaintiff's medical care.

Finally, the Butte County Jail is not a viable defendant in a section 1983 action. *See, e.g., Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) ("Naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality.") (citation omitted).

Plaintiff may file an amended complaint. He is advised that the amended complaint will supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current complaint no longer serves any function. Therefore, in an amended

1 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
2 defendant's involvement in sufficient detail. The amended complaint should be titled "First
3 Amended Complaint" and refer to the appropriate case number.

4 Accordingly, it is ORDERED that:

5 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 10, is GRANTED.

6 2. Within thirty days from the service of this order, plaintiff must either file an amended
7 complaint or advise the court of his intent to stand by his current complaint, subject to a
8 recommendation that this action be dismissed for failure to state a claim.

9 3. Failure to comply with this order may result in the dismissal of this action.

10 4. The Clerk of Court is directed to send plaintiff a complaint form.

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12 IT IS SO ORDERED.

13 Dated: January 23, 2023

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15 JEREMY D. PETERSON
16 UNITED STATES MAGISTRATE JUDGE
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